

CONTRIBUTION AGREEMENT

between the

**UNITED STATES DEPARTMENT OF AGRICULTURE
NATURAL RESOURCES CONSERVATION SERVICE (NRCS)**

and

COCHISE COUNTY (Sponsor)

PROJECT: Cochise County Emergency Watershed Protection (EWP) Project

I. AUTHORITY

A. Code of Federal Regulations, Title 7: Agriculture, Part 624-Emergency Watershed Protection, paragraph 624.8(c) authorizes NRCS to enter into a cooperative agreement with a sponsor.

B. For purposes of this agreement, "Sponsor" refers to Cochise County and is defined in 7 CFR 624.4(g) as: "Project sponsor means a State government or a State agency or a legal subdivision thereof, local unit of government, or any Native American tribe or tribal organization as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b), with a legal interest in or responsibility for the values threatened by a watershed emergency; is capable of obtaining necessary land rights; and is capable of carrying out any operation and maintenance responsibilities that may be required."

II. PURPOSE

A. The purpose of this agreement is to provide financial assistance to Sponsor to implement emergency recovery measures. The watershed impairment was caused by the Arizona Storm Event which occurred September 22, 2014. Lives and properties within the affected area are now threatened with flooding and erosion damages due to future storm events.

B. This agreement provides NRCS financial assistance to the Sponsor in the amount of \$48,000.00 for on-the-ground construction work (up to 75% of total construction costs). Total construction costs are estimated to be \$64,000.00. Sponsor is responsible for 25% of these costs or \$16,000.00 in either direct cash expenditures by the Sponsor or the value of in-kind materials and/or services.

NOTE: The Sponsor is prohibited from using federal funds as any portion of the cost-share requirement. Funds are considered federal in origin if disbursed directly to the Sponsor by a federal government agency or indirectly through another entity. For example, federal funding to a state agency passed by the state to a county and from the county to a city is considered to be federal in origin by the state, the county, and the city. Neither the state, county, nor city could count the federal funds as a cost-share contribution.

III. BENEFITS

NRCS funding will be used to implement emergency recovery measures, providing immediate benefits to affected residents, and long-term benefits to the general public in protection of the affected watershed.

IV. ATTACHMENTS TO AGREEMENT

The following attachments are incorporated into the agreement:

Attachment A: Plan of Work

Attachment B: Terms and Conditions for Grants and Cooperative Agreements

Attachment C: Bona Fide Need Certification

Attachment D: Felony Conviction Tax Form

V. TERM OF THE AGREEMENT

This agreement is effective on the date it is fully executed by all parties to this agreement and continues in full force through January 15, 2015. This agreement may be renegotiated, amended, extended, or modified by a written amendment as mutually agreed by both parties and in accordance with NRCS Policy.

VI. CONTACT INFORMATION

Cochise County	Natural Resources Conservation Service
Technical Contact	Technical Contact
Karen Riggs, P.E.	David Beyman, P.E.
Director, Highway & Floodplain Division	State Conservation Engineer
1415 W Melody Lane	230 N. First Avenue
Bisbee, AZ, 85603	Phoenix, AZ 85003
Phone: (520) 432-9300	Phone: (602) 285-6351
Email: kriggs@cochise.az.gov	Email: david.beyman@az.usda.gov
<u>Administrative Contact</u>	<u>Administrative Contact</u>
Karen Riggs, P.E.	David Beyman, P.E.
Director, Highway & Floodplain Division	State Conservation Engineer
1415 W Melody Lane	230 N. First Avenue
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Email: kriggs@cochise.az.gov	Email: david.beyman@az.usda.gov

VII. RESPONSIBILITIES AND OBLIGATIONS:

A. Sponsor will:

1. Construction Plan - Sponsor and NRCS will evaluate damage and jointly determine priority sites and the most effective measures to be implemented with the funding available. Measures to be implemented are described in the attached Plan of Work.

a. Sponsor will be responsible for all Engineering Services, Quality Assurance and Project Administration costs to construct the measures.

b. Construction documents will include USDA bonding requirements and construction clauses and the NRCS Supplement to OSHA Parts 1910 and 1926 (see attachments).

c. Sponsor will adhere to procurement policies of the Code of Federal Regulations, Section 7, 3016.36 (7 CFR 3016.36) entitled "Procurement"

d. The Sponsor will comply with the General Terms and Conditions for Grants and Cooperative Agreements (see attachment).

2. Funding and Cost-Share - Total construction cost of the project is estimated to be \$64,000.00. NRCS is providing Financial Assistance (FA) funds to the Sponsor for up to 75 percent of total allowable on-the-ground construction costs (\$48,000.00). The Sponsor is responsible for cost-sharing 25 percent of total construction costs (\$16,000.00). The Sponsor's contribution may be comprised of Sponsor funds, the value of in-kind labor, materials, use of equipment, etc. Once the project is completed and all requests for reimbursement submitted, any excess funding remaining in the agreement (over and above the NRCS commitment of up to 75 percent of actual construction costs) will be deobligated from the agreement.

The work items and cost estimates are as specified in Attachment A Plan of Work.

NOTE: EWP program rules prohibit NRCS from reimbursing the Sponsor for work performed prior to award date of this agreement.

3. Pre-Construction Notification - Prior to beginning any on-the-ground construction work, review all items in this agreement and contact the NRCS Project Manager, when necessary, to ensure any concerns have been addressed and resolved.

4. Real Property Rights – Submit a completed ADS-78 form, Assurances Relating to Real Property Acquisition, to the NRCS Program Manager. In accordance with EWP program regulations, NRCS cannot pay for these costs nor can they be counted as a cost-share contribution by the Sponsor.

5. Permits – Ensure all applicable Federal, State, and local permits are obtained and work is performed in accordance with permit requirements. All costs relative to obtaining required permits will be borne by the Sponsor. In accordance with EWP program regulations, NRCS cannot pay for these costs nor can they be counted as a cost-share contribution by the Sponsor.

6. National Environmental Protection Act Compliance (NEPA) – The Sponsor is responsible for compliance with NEPA requirements as identified in the Damage Survey Report (DSR).

7. National Historic Preservation Act Compliance – Construction contracts awarded by the Sponsor must incorporate all cultural resource requirements as identified in the DSR.

8. Endangered Species Act Compliance – The Sponsor is responsible for compliance with Endangered Species Act requirements, including implementation of any avoidance and minimization measures and conservation measures, as identified in the DSR.
9. Construction Contract(s) – Solicit, evaluate, award, and manage construction contract(s) in accordance with established Sponsor procurement policy and all applicable State and Federal laws and regulations.
10. Safety – All contractors on NRCS assisted projects are required to perform their work in accordance with OSHA regulations, NRCS Supplement to OSHA Parts 1910 and 1926 (see attachment), and the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). The Sponsor is responsible for periodically checking the contractor's compliance. The Sponsor will notify NRCS of all accidents and/or injuries that occur on the NRCS assisted project.
11. Engineering and Construction Performance –
 - a. Ensure individuals and/or organizations providing engineering services employ a licensed professional engineer who directly supervises the staff performing the services or who serves as a Principal.
 - b. Ensure any designs, drawings and specifications submitted for a functional review to the NRCS State Conservation Engineer meet NRCS standards and are sealed by a licensed engineer. The documents will be certified as follows: "To the best of my professional knowledge, judgment and belief, these plans (or this report, etc.) meet applicable NRCS standards." This certification statement will be signed and sealed by the licensed professional engineer.
 - c. Agree that NRCS engineering staff will perform only a functional review of the design and specifications. NRCS shall provide feedback in writing to the Sponsor if items of concern are discovered in the functional review. The functional review shall be conducted in accordance with guidance provided in NRCS National Engineering Manual (NEM) 505.03(b)(3).
 - d. Ensure that all construction is performed in compliance with Sponsor's design and specifications, NRCS standards, and requirements of all necessary local, State, and Federal permits.
12. Notification of Significant Events - Immediately notify the NRCS Project Manager of events that impact the project. Such events include problems, delays, and adverse or differing site conditions that will materially impair continuation of the project.
13. Operations and Maintenance – Prepare an Operations and Maintenance (O&M) Plan and submit the Plan to the NRCS Project Manager for review. Conduct required operation and maintenance as described in the approved O&M Plan. The Sponsor is responsible for all operation and maintenance costs.
14. Excess costs - Accept all financial and other responsibility for excess costs resulting from failure of the Sponsor to obtain, or delay in obtaining, adequate land and water rights, permits, and licenses needed for the emergency recovery measures.

15. Deficient Construction Services - Accept liability for any damage and any additional construction costs to others to correct problems arising during or after construction resulting from deficient construction services performed by or through the Sponsor.
16. Deviations from Certified Design – Obtain NRCS concurrence, in writing, for any deviations from the Sponsor’s design and specifications. Construction should not be delayed to await approval unless there is reasonable doubt on the part of the Sponsor that the change will be unacceptable to NRCS. All changes and corrections will be documented by the Sponsor in writing and submitted to the NRCS Project Manager within 24 hours of occurrence.
17. Removal or Relocation of Utilities – Arrange and pay for any necessary location, removal, or relocation of utilities. In accordance with EWP program regulations, NRCS cannot pay for these costs nor can they be counted as a cost-share contribution by the Sponsor.
18. Progress and Final Reports – During construction of the project, provide weekly progress reports, including photos, to the NRCS Project Manager. Upon completion of the project, provide a final project report, including photos, to the NRCS Project Manager. Photos should show construction methods, construction problems and solutions, and completed project measures.
20. Increased Level of Protection – If the Sponsor desires to increase the level of protection over and above that described in the Plan of Work, the Sponsor will be responsible for paying 100 percent of the costs of any additional work.
21. Unforeseen events – Events may occur that have significant impact upon the project. In such cases, the Sponsor must inform the NRCS Project Manager either (1) verbally, if the issue is time-sensitive, with a written notice documenting the conversation submitted to NRCS within 24 hours of occurrence; or (2) if the issue is not time-sensitive, in writing, as soon as problems, delays, or adverse conditions are known. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.
22. As-built Drawings – Upon completion of the project, submit as-built drawings to the NRCS Project Manager.
23. Requesting Reimbursement and Financial Reporting – Reference “Payments” section in attachment entitled “General Terms and Conditions” .
24. Nondiscrimination Requirements - Recipients of Federally-Assisted Programs are required to post the following notice in their offices and include, in full, on all materials regarding this project that are produced by the recipient for public information, public education, or public distribution:

“In accordance with Federal law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, or disability. To file a complaint of discrimination write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410 or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.”
25. Performance Reports – In accordance with 7 CFR 3015.92, because this is a construction project, on-site technical inspections and certified percentage-of-completion data will be used to monitor progress. No written performance reports will be required.

28. Contractual and legal issues – The Sponsor is responsible, without recourse to NRCS or USDA, for the settlement and satisfaction of all contractual and legal issues arising out of arrangements entered into between the Sponsor and others to carry out approved project activities. Matters concerning violation of law should be referred to the federal, state, or local authority having proper jurisdiction.

B. NRCS will:

1. Contribute up to \$48,000.00 in financial assistance funds toward project construction costs. Funds will be expended as explained in this agreement.
2. Develop and write the Damage Survey Report (DSR). A copy of the report will be submitted to the Sponsor's Project Manager.
3. Complete all necessary NEPA and cultural resources documentation.
4. Provide a functional review of the Sponsor's design and specifications.
5. Review the Operations and Maintenance Plan for the project developed by the Sponsor.
6. Upon receipt of a properly completed SF-270, Request for Advance or Reimbursement, and requested proper supporting documentation, assess description of work completed relative to allowable funds requested and, if request is reasonable, approve and process payment to the Sponsor. In the event there are questions regarding the SF-270 and supporting documentation, NRCS will contact the Sponsor in a timely manner to resolve concerns.

VIII. AMENDMENTS, CHANGES, AND TERMINATION

See General Terms and Conditions incorporated into the agreement as an attachment.

IX. APPROVAL

The United States Department of Agriculture, Natural Resources Conservation Service and Cochise County execute this agreement as of the date of final signature by NRCS on NRCS-ADS-093 form, Notice of Grant and Agreement Award. The signatories represent that each is duly authorized to bind their respective organization to the terms of this agreement. By signing the NRCS-ADS-093 form, the Sponsor assures NRCS that the program or activities provided for under this agreement will be conducted in compliance with all applicable Federal civil rights laws, rules, regulations, and policies.